

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
I. ROTHSCHILD, INC.	:	
for Review of a Denial, Suspension, Cancellation or		ORDER
Revocation of a License, Permit or Registration under	:	DTA NO. 819225
Articles 20 and 20-A of the Tax Law for the Period		
February 13, 2002.	:	

Petitioner, I. Rothschild, Inc., 723 William Street, Buffalo, New York 14206, filed a petition for review of a denial, suspension, cancellation or revocation of a license, permit or registration under Articles 20 and 20-A of the Tax Law for the period February 13, 2002.

The Division of Taxation ("Division"), by its representative, Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel), filed a motion dated January 28, 2003 for an order dismissing the petition or granting summary determination and denying the petition. Petitioner¹ filed reply papers which were due by March 13, 2003, and such date began the 90-day period for the issuance of this order. Based upon the motion papers, the affirmation, affidavit and documents filed by the Division and the affidavit and attachment filed in reply, and the pleadings in this matter, Frank W. Barrie, Administrative Law Judge, renders the following order.

¹ Papers dated March 10, 2003 in reply to the Division's motion were submitted by attorney Robert I. Jadd "[o]n behalf of my clients, Irwin and Terry Rothschild only." The corporate petitioner, in contrast, has not appeared on this motion. Consequently, the analysis in the Conclusions of Law that the corporate petitioner has not filed a valid petition is further bolstered by attorney Jadd's appearance on behalf of individuals only and not the corporation. Nonetheless, in his reply papers, attorney Jadd contends that "there is no logical reason for the Department to cancel the license [at issue] since the issue is moot." He points to the fact that "all existing cigarette agent licenses expired by operation of law on September 30, 2002 and all wholesale dealer of cigarette licenses expire[d] on December 31, 2002. . . ."

ISSUE

Whether the petition filed by a former officer on behalf of the corporate petitioner confers jurisdiction on the Division of Tax Appeals over the corporate petitioner.

FINDINGS OF FACT

1. The petition of I. Rothschild, Inc. dated November 19, 2002 was signed by Leonard M. Fogelman on behalf of the corporate petitioner. Attorney Fogelman was authorized to act on behalf of I. Rothschild, Inc. by a power of attorney dated February 19, 2002 signed by Irwin Gerald Rothschild in his stated capacity of president of I. Rothschild, Inc.

2. The petition of I. Rothschild, Inc. indicates that on December 4, 2001, Irwin Gerald Rothschild and his brother, Terry Rothschild, executed a stock purchase agreement by which they sold 100% of the stock of I. Rothschild, Inc. to Mexcor, Inc. On January 31, 2002, the by-laws of I. Rothschild, Inc. were amended to expand the board of directors to four positions, and Carl Nappi, Warren Lee, Frank Julian and Jose Garcia were installed as directors of the corporation. On February 10, 2002, the new board of directors removed Irwin Gerald Rothschild as president and installed new corporate officers. Carl Nappi was appointed president, Frank Julian was appointed vice-president, and Terry Rothschild was appointed secretary/treasurer.

CONCLUSIONS OF LAW

A. Attorney Leonard M. Fogelman did not have legal authority to file a petition on behalf of the corporate petitioner, I. Rothschild, Inc. As noted in Finding of Fact “2”, Irwin Gerald Rothschild was removed from his position of president of the corporate petitioner on February 10, 2002. Consequently, the power of attorney Mr. Rothschild executed nine days later on February 19, 2002 in the stated capacity of corporate president, by which attorney Fogelman was appointed to represent I. Rothschild, Inc., was invalid.

B. Consequently, the petition of I. Rothschild, Inc. dated November 19, 2002 must be dismissed since the corporation has, in fact, *not* acted through one of its officers or employees but rather through a *former* officer (*see*, 20 NYCRR 3000.2(a) [wherein it is provided that “where a corporation files a petition, it may act through one of its officers or employees”])).

C. The petition dated November 19, 2002 of I. Rothschild, Inc. is dismissed.

DATED: Troy, New York
May 15, 2003

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE